HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1637 of 2001 (MS)

Diwan Singh ..... Petitioners

Versus

Additional District Judge,
Udham Singh Nagar & others ..... Respondents

Dated: October 27, 2004

Hon. Rajesh Tandon J.

By the present Writ Petition, the petitioner has prayed for quashing of the order dated 20.9.1999, annexure-11 to the writ petition.

Briefly stated the petition has filed a suit being suit No. 76 of 1991 in the court of Civil Judge, praying for the injunction and demolition of unauthorised construction. The respondent no.3 has filed a counter claim in the suit against the petitioner alleging therein that the petitioner had no claim in the disputed land.

The trial Court has dismissed the suit vide order dated 27.2.1999 and allowed the counter claim of the respondent no.3.

The petitioner has preferred an appeal being appeal no. 17 of 1999. During the pendency of the appeal the petitioner has filed an application under Order 6 Rule 17 for seeking amendment in the written statement filed by the petitioner against the counter claim. The defendant has sought the following amendment in the counter claim:

प्रस्तर 10 के उपरान्त निम्न लिखित प्रस्तर बढाया जावे

10 (अ) यह कि प्रतिदावा अल्प व अवैधानिक रूप से मूल्याकिंत है। प्रतिकार अ पर कोई न्यायशुल्क अदा नही किया गया है, अतः प्रतिदावा विधिक रू॰ से मूल्यांकित नही है । नही उस पर प्रर्याप्त न्यायशुल्क अदा किया गया है इसी आधार पर प्रतिदावा निरस्त किये जाने योग्य है।

10 (ब) यह कि प्रतिवादीगण को प्रतिदावा प्रस्तुत करने को कोई कारण उत्पन्न नही हुआ।

10 (स) यह कि प्रतिदावा अर्न्तगत आदेश दृ7 नियम 11 दीवानी प्रक्रिया संहिता के निरस्त किये जाने योग्य है।

The appellate Court has rejected the application of the petitioner under order 7 Rule 11 as the provisions of Order 7 Rule 11 cannot be exercised at the appellate stage.

So far as the order regarding payment of court fee is concerned the same has been rightly passed by the appellate Court.

So far as the amendment in the written statement against the counter claim is concerned the same cannot be interfered.

In view of the above observation, the writ petition is dismissed. No order as to costs.

(Rajesh Tandon J.)

October 27, 2004

*Dhyani